PREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 833

WILLIAM M. LOKER, JR., *Petitioner*,

v.

STATE OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

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INDEX

Page

Opinions below 1

Jurisdiction 2

Questions presented 2

Constitutional provisions involved 3

Statement 4

How the Federal question was raised 8

Reasons for granting the writ 13

Conclusion 17

Appendix—Opinions below 1a

AUTHORITIES

CASES:

Ballard v. *United States*, 329 U.S. 187 17
Bryant v. *Zimmerman*, 278 U.S. 63 14
Cassell v. *Texas*, 339 U.S. 282 ..... 15, 16, 17
Eubanks v. *Louisiana*, 356 U.S. 584 15
Hernandez v. *Texas*, 347 U.S. 475 15
King v. *State*, 190 Md. 361, 58 A. 2d 663 16
Reece v. *Georgia*, 350 U.S. 85 15
Schowgurow v. *State*, 240 Md. 121, 213 A. 2d 475 2, 3, 4, 5, 6, 13, 14, 15, 16, 17
State v. *Madison*, 240 Md. 265, 213 A. 2d 880 ....6, 14, 17
Thiel v. *Southern Pacific Co.*, 328 U.S. 217 17
Torcaso v. *Watkins*, 367 U.S. 488 ..... 2, 3, 5

CONSTITUTIONAL PROVISIONS:

Constitution of the United States:

First Amendment 3

Fourteenth Amendment 2, 3, 4, 6, 13, 14, 16

Constitution of Maryland:

Declaration of Rights, Art. 36 ..... 2, 3, 4, 6, 13, 17

Declaration of Rights, Art. 37 ..... 2, 3, 5

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

WILLIAM M. LOKER, JR., your petitioner, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland, entered in the above-entitled case on September 27, 1968.

OPINIONS BELOW

The opinion of the Court of Special Appeals of Maryland (set forth in part at pp. 8-10, below) is reported at 2 Md. App. 1 and 233 A. 2d 342. The opinion of the Court of Appeals of Maryland (Appendix, *infra*, pp. 1a-13a) is reported at 245 A.2d 814.

JURISDICTION

The opinion of the Court of Appeals of Maryland was filed on September 27, 1968. A timely motion for reargument was denied on November 5, 1968. Under Maryland practice there is no formal judgment, only a mandate; and in the present case the mandate was stayed for 90 days from September 27, 1968, to permit the filing of the present petition. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Following the invalidation in *Torcaso* v. *Watkins,* 367 U.S. 488, of Article 37 of the Declaration of Rights of the Maryland Constitution, which required "a declaration of belief in the existence of God" as a prerequisite to holding public office, the Maryland Court of Appeals in *Schowgurow* v. *State,* 240 Md. 121, 213 A. 2d 475, held invalid, as violative of the Fourteenth Amendment, Article 36 of the Declaration of Rights of the Maryland Constitution, which required as a prerequisite to the competency of a juror that "he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come."

A grand jury had been empaneled from a jury panel selected prior to the *Schowgurow* decision. Thereafter the trial court judges entered an order discharging the grand jury, reciting that it was "illegally constituted because the procedure used in the selection and qualifying of said Grand Jury was substantially the same as found to be illegal in the above-mentioned Schowgurow case." Subsequently another grand jury was selected from the remaining members of the original panel, and it was this second grand jury that indicted petitioner.

The question presented is whether the indictment thus returned can, consistently with the Fourteenth Amendment, sustain petitioner's conviction thereon.

CONSTITUTIONAL PROVISIONS INVOLVED

I. Constitution of the United States

The provisions of the First and Fourteenth Amendments are sufficiently familiar so that they do not require quotation.

II. Constitution of Maryland

1. The provision of the Maryland Declaration of Rights that was held in *Torcaso* v. *Watkins*, 367 U.S. 488, to violate the Fourteenth Amendment reads as follows:

> **"Article 37. Religious tests as qualification for office; oath of office.**
>
> "That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution."

2. The provision of the Maryland Declaration of Rights that was held in *Schowgurow* v. *State*, 240 Md. 121, 213 A. 2d 475, to violate the Fourteenth Amendment, reads as follows:

> **"Article 36. Religious freedom.**
>
> "That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought by any law to be molested in his person or estate, on account of his religious persuasion, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain,

any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief; provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come."

STATEMENT

The recital that follows will be restricted to the facts bearing on the Federal question raised by the present petition.

On September 2, 1965, a 150-name jury panel was selected by the Circuit Court for St. Mary's County, Maryland, pursuant to the Constitution of that State and the general and local laws applicable to St. Mary's County. The contention made below, that the method of selection was not in conformity with the Maryland statutes, involved no Federal question and is no longer in issue.

At that time, Article 36 of the Declaration of Rights of the Maryland Constitution (*supra*, pp. 3-4) provided as a prerequisite for the qualification of a juror that "he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come."

On September 7, 1965, a grand jury was drawn from the foregoing panel, and that grand jury was empaneled (i.e., sworn) on September 20, 1965.

Thereafter, on October 11, 1965, the Maryland Court of Appeals held in *Schowgurow* v. *State*, 240 Md. 121, 213 A. 2d 475, that the provisions of Article 36, just quoted, were invalid under the Fourteenth Amendment of the Constitution of the United States, this in reliance on this Court's

decision in *Torcaso* v. *Watkins*, 367 U.S. 488, which had similarly held invalid the requirement in Article 37 of the Maryland Declaration of Rights of a like belief as a prerequisite to the holding of public office.

In consequence of the *Schowgurow* case, the judges for the Seventh Judicial Circuit, in which St. Mary's County is included, ordered that the grand jury empaneled for that county on September 20, 1965, be discharged. Their order, entered on the minutes of the court and signed by all the judges except one (who was absent), read as follows:

"IN THE CIRCUIT COURT FOR ST. MARY'S COUNTY, MARYLAND

"In Re: GRAND JURY for
SEPTEMBER TERM 1965

"ORDER OF COURT

"This Court having been made aware of the decision of the Court of Appeals of Maryland in the case of Lidge Schowgurow v. State of Maryland, No. 368, September Term 1964, filed on October 11, 1965, and it being obvious to the Court that the Grand Jury empaneled on September 20, 1965 is illegally constituted because the procedure used in the selection and qualifying of said Grand Jury was substantially the same as found to be illegal in the above mentioned Schowgurow case. It is therefore this 15th day of October, 1965,

ORDERED, by the Circuit Court for St. Mary's County, Maryland, that the Grand Jury empaneled on September 20, 1965, for the September Term 1965, is hereby declared to be illegally constituted and the members constituting the said Grand Jury being disqualified are hereby discharged. It is further

ORDERED, that a new Grand Jury be empaneled, selected in accordance with the provisions of Article 51 of the Annotated Code of Maryland (1964 replacement volume) as amended by Chapter 849 of the Acts

of the General Assembly, Maryland 1965 Session, as well as any other public general or public local laws applicable thereto.

/s/ J. Dudley Digges
J. Dudley Digges, C. J.

/s/ Philip H. Dorsey, Jr.
Philip H. Dorsey, Jr., A. J.

/s/ Roscoe H. Parker,
Roscoe H. Parker, A. J.

/s/ Ernest A. Loveless, Jr.,
Ernest A. Loveless, Jr., A. J.

/s/ Wm. B. Bowie
William B. Bowie, A. J.

/s/ Perry G. Bowen, Jr.
Perry G. Bowen, Jr., A. J.

.....
Robert B. Mathias, A. J.

/s/ Samuel W. H. Meloy
Samuel W. H. Meloy, A. J."

The original grand jury was in consequence dismissed on October 21, 1965.

Also on October 21, 1965, the Maryland Court of Appeals held in *State* v. *Madison,* 240 Md. 265, 213 A. 2d 880, that a believer had a right under the Constitution of the United States to a grand jury selected free from the restrictions of Article 36 of the Declaration of Rights, and that holding was articulated in an opinion filed on November 5, 1965.

On October 22, 1965, a second grand jury was empaneled from among the remaining members of the same jury panel that the Circuit Judges had held invalidly constituted under the *Schowgurow* case.

This second grand jury, on November 4, 1965, handed down a four count indictment against petitioner.

At the hearing on petitioner's motion to dismiss that indictment, on the ground, among others, that the grand jury had been improperly selected, Circuit Judge Dorsey, the resident judge for St. Mary's County, testified:

> "Q. And now, at the time you selected the panel in 1965, were you of the belief that [no] one was eligible to serve as jurors unless he believed in moral accountability for his conduct?
>
> "A. Naturally, that being the State Constitution at the time I was of that belief, but in selecting the 150 names, that question was never asked of anyone.
>
> "Q. Did you have reference to it in your picking of these names?
>
> "A. Since I have been judge, I have never known of anyone *who's* name was suggested for the jury, being a non-believer, nor has it ever been mentioned so far as I can recall."

Judge Dorsey in his testimony made no mention of the order, set out above, signed by himself and by six other judges, that had dismissed the original grand jury as "illegally constituted because the procedure used in the selection and qualifying of said Grand Jury was substantially the same as found to be illegal in the above mentioned Schowgurow case."

The motion to dismiss was denied, and, in due course, petitioner was convicted on two of the four counts. Thereafter the Maryland Special Court of Appeals, the intermediate appellate court in that State, affirmed; the Maryland Court of Appeals, the court of last resort, granted a petition for certiorari and likewise affirmed; and then denied a motion for reargument.

Petitioner now seeks in this Court review of his contention that the grand jury which indicted him was selected in violation of the Fourteenth Amendment to the Constitution of the United States.

HOW THE FEDERAL QUESTION WAS RAISED

1. Petitioner's Motion to Dismiss Indictment, filed in the Circuit Court for St. Mary's County, Maryland, alleged in part:

> "1. The Grand Jury which handed down said indictment was improperly, unlawfully and unconstitutionally selected, drawn, and impaneled."

2. The opinion of the Court of Special Appeals of Maryland included the following relative to the foregoing (2 Md. App. 1, 6-8, 233 A.2d 342, 346-347):

> "The legal basis for the contention that the Grand Jury was selected and empaneled unconstitutionally is predicated upon the decisions of the Court of Appeals in *Schowgurow* v. *State,* 240 Md. 121, decided October 11, 1965 and *State* v. *Madison,* 240 Md. 265. In *Schowgurow,* at page 131 the Court held that, under the decision of the Supreme Court in *Torcaso* v. *Watkins,* 367 U.S. 488, the provisions of the Maryland Constitution requiring demonstration of belief in God as qualification for service as a grand or petit juror were in violation of the Fourteenth Amendment to the federal constitution, and that any requirement of an oath as to such belief, or inquiry of prospective jurors, oral or written, as to whether they believe in a Supreme Being, was unconstitutional. The Court said, page 126:
>
> > 'Because of the requirement of the Maryland Constitution,[1] it has been the duty of nisi prius judges to make belief in God a condition to service as a juror. There is a strong presumption that judges and court clerks, like other public officers, properly perform their duties. [Citations omitted.]

---

[1] Article 36 of the Maryland Declaration of Rights provides, *inter alia,* that no person otherwise competent shall be deemed incompetent as a juror on account of his religious belief, "provided he believes in the existence of God, and that under his dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come."

> * * * Moreover this Court takes judicial notice of the fact that it is and for many years has been a widespread practice in this State, not only for grand and petit jurors to be questioned as to their belief in God as part of their oath, but also for prospective jurors to be so questioned, orally or in written interrogations, before their names are placed on the jury lists, and that any person who does not state his belief in God is excluded.'

It pointed out that the exclusion of non-believers was not only authorized but demanded by the Maryland Constitution and that the resulting danger of abuse obviates any need to show individual prejudice.

"The factual basis for the contention was that evidence produced at the hearing showed that from a list of 150 persons selected by the Honorable Philip H. Dorsey, Jr., Associate Judge of the Circuit Court of the Seventh Judicial Circuit of Maryland, prior to September 2, 1965, 23 persons were selected as the Grand Jury for the September term, 1965 and 25 persons as the petit jury panel. After the decision in *Schowgurow,* the Grand Jury so selected was discharged. From the 102 persons remaining on the original list a new Grand Jury was selected. It was this latter Grand Jury that returned the indictment against the appellant on November 4, 1965. The appellant argues that if the list of 150 persons was compiled in compliance with the then prevailing law of Maryland, it necessarily follows that a Grand Jury selected from that panel was unconstitutionally chosen. The evidence is clear, however, that in compiling this list no person was excluded because he did not believe in the existence of God. Judge Dorsey, called by the appellant, testified, and the record discloses no evidence to the contrary, that, in selecting the 150 persons, a question with respect to belief 'in a Supreme Being' and 'in moral accountability for [a person's] conduct' was 'never asked of anyone.' In answer to a question, 'Did you have reference to it in your picking of these names?', he answered, 'Since I have been judge, I have never known of anyone who's name was suggested for the jury, being a non-believer, nor has it ever been

mentioned so-far-as I can recall.' On cross-examination he was asked, 'Is there any form that a person fills out or signs or anything or taken by any person to be eligible to get on the list of 150 names?' He replied, 'No, sir, there is no form as-far-as I can recall. It has never been asked whether or not they believe in God, when the name was placed on the list of 150.' A person was included in the list 'without their knowing it.' It appears obvious that the first Grand Jury was discharged because an oath reflecting a belief in a Supreme Being had actually been administered to its members before they commenced their duties and not because the panel from which it was selected was unconstitutionally compiled. The 'strong presumption' stated in *Schowgurow* that prospective jurors were questioned as to their belief in God, was rebutted by direct evidence in the instant case. In reiterating *Schowgurow* in *State* v. *Madison, supra,* the Court said, page 273:

> '* * * *once it is established that the method of the grand jury's selection is unconstitutional,* any accused indicted by such a jury has the right to have the indictment dismissed.' (emphasis supplied)

The record is clear here that the indicting Grand Jury's selection with regard to the principles enunciated in *Schowgurow* was constitutional, and we so hold."

3. Part II of petitioner's petition for a writ of certiorari in the Court of Appeals of Maryland to review the foregoing decision of the Court of Special Appeals of Maryland was as follows:

> "The writ should be issued in this case because the Special Court has disregarded the rulings of this Court in *Schowgurow* v. *State,* 240 Md. 121, 213 A.2d 475 (1965); and *Madison* v. *State,* 240 Md. 265, 213 A.2d 880 (1965). This it did by permitting a grand jury to be chosen from a panel selected prior to the *Schowgurow* decision, at a time when those connected with the administration of this State's judicial machinery believed that anyone not professing a belief in a Su-

preme Being was ineligible to serve on a Maryland jury. It was therefore the duty of such persons, including the Circuit Judge for St. Mary's County, to exclude from the panel anyone not professing a belief in a Supreme Being, that is, anyone who was either an agnostic or an atheist. This Court has stated that it is to be presumed that such duty was in fact carried out.

> 'Because of the requirement of the Maryland Constitution, it has been the duty of nisi prius judges to make belief in God a condition to serve as a juror. There is a strong presumption that judges and court clerks, like other public officers, properly perform their duties.' Schowgurow v. State, 240 Md. 121, 126, 213 A.2d 475, 479 (1965).

"This 'strong presumption' that the Circuit judge for St. Mary's County 'properly performed' his duty was not overcome by the Delphic testimony of Judge Dorsey relied on by the State and by the Special Court.

> 'Q. And now, at the time you selected the panel in 1965, were you of the belief that no one was eligible to serve as juror unless he believed in a supreme being and unless he believed in moral accountability for his conduct? A. Naturally, that being the State Constitution at the time I was of that belief, but in selecting the 150 names, that question was never asked of anyone.
>
> 'Q. Did you have reference to it in your picking of these names? A. Since I have been judge, I have never known of anyone who's [sic] name was suggested for the jury, being a non-believer, nor has it ever been mentioned so-far-as I can recall.' (T. 25)

"If any conclusion can be drawn from Judge Dorsey's testimony, it would be that the entire jury panel selection procedure was carried out on the assumption that non-believers were to be excluded. This is no doubt why no non-believer's name was ever 'suggested for the jury' as far as the judge could recall.

"It is most regrettable that the circuit judge, who, in the aftermath of the *Schowgurow* decision, dis-

charged the grand jury and petit jury which he had impaneled and to which he had administered the oath required by the Maryland Constitution, did not also discharge the remaining members of the panel from which these two juries had been selected, and then selected a new panel of 150 prospects. However, he did not do so, with the result that your petitioner was indicted by a post-*Schowgurow* grand jury picked from a pre-*Schowgurow* panel.

"This issue was seasonably presented several months prior to trial by a motion to dismiss the indictment. This Court has afforded the benefit of the *Schowgurow* decision to defendants who did not raise the point until their case had reached the appellate stage. *Madison* v. *State*, supra. A fortiori, then, a defendant such as petitioner, who raised the issue via pre-trial motion, is entitled to assert the point it decided."

4. The opinion of the Court of Appeals of Maryland (Appendix, *infra*, pp. 2a-4a) dealt with this issue as follows:

"Following this affirmance a petition for the writ of certiorari was filed in this Court setting forth grounds hereinafter specified in detail and it was ordered on the 16th day of November, 1967, that the writ should issue and that the case be transferred to the regular docket as No. 323—September Term, 1967.

"In his petition, the appellant raises the following issues:

"I

"The writ should be issued so that this Court may review that aspect of the Special Court's decision which brushed aside petitioner's showing that the indicting grand jury was not selected in the manner prescribed by the statutes of this State.

"II

"The writ should be issued in this case because the Special Court has disregarded the ruling of this Court

in *Schowgurow* v. *State*, 240 Md. 121, 213 A. 2d 475 (1965); and *Madison* v. *State*, 240 Md. 265, 213 A. 2d 880 (1965).

* * * * *

"THE MOTION TO DISMISS THE INDICTMENT

"Appellant's issues I and II were raised in the Circuit Court by a motion to dismiss the indictment, which motion was overruled, after hearing and before trial on a not guilty plea pursuant to Maryland Rule 725. They were fully and adequately dealt with by the Court of Special Appeals which found no error in the denial of the motion to dismiss in which ruling we concur for the reasons stated by that Court. 2 Md. App. 5-16, 233 A. 2d, 346-352. That Court neither brushed aside the contentions of the appellant nor disregarded the rulings of this Court."

REASONS FOR GRANTING THE WRIT

Inasmuch as the first grand jury was discharged by order of the Circuit Judges because it had been selected in the same manner as that in the *Schowgurow* case (240 Md. 121, 213 A. 2d 475), and since that decision dismissed the indictment there involved because jury selection pursuant to the requirements of Article 36 of the Maryland Declaration of Rights (*supra*, pp. 3-4) involved a violation of the Fourteenth Amendment, it would seem obvious that a second grand jury drawn from the same infected panel had likewise been constituted in violation of the Fourteenth Amendment. But before elaborating this proposition, it may be appropriate to say a few words concerning this Court's jurisdiction.

First. Inasmuch as the Court of Special Appeals dealt with petitioner's claim as one that involved a claim of Federal right, citing the Fourteenth Amendment (*supra*, pp. 8-10), and the Court of Appeals then specifically approved the intermediate court's denial of the claimed Fed-

eral right (*supra*, p. 13), it is plain that the Federal question was properly raised and clearly determined below.

Even without that, petitioner's State petition for certiorari adequately presented the Federal question notwithstanding its failure to invoke the Fourteenth Amendment *eo nomine*. For that petition in effect incorporated the Fourteenth Amendment by reference, by relying on the two decisions of the Maryland Court of Appeals in *Schowgurow* v. *State*, 240 Md. 121, 213 A. 2d 475, and *State* v. *Madison*, 240 Md. 265, 213 A. 2d 880, in both of which that tribunal had applied the Fourteenth Amendment to invalidate indictments returned by grand juries selected pursuant to the Maryland Constitution as written.

Consequently here, as in *Bryant* v. *Zimmerman*, 278 U.S. 63—a case jurisdictionally very similar to this one—the Federal question has been asserted and determined so as to enable this Court to review the decision below. As was there said (p. 67):

> "No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented."

Second. On the merits, the decisive fact is this case is the formal order of the Circuit Judges reciting "that the Grand Jury empaneled on September 20, 1965 is illegally constituted because the procedure used in the selection and qualifying of said Grand Jury was substantially the same as found to be illegal in the above mentioned Schowgurow case." From this it necessarily and indeed inescapably follows that the second grand jury, which indicted petitioner, and which was drawn from the remaining members

of the identical infected panel that had been chosen on September 2, was likewise illegally constituted in violation of the Fourteenth Amendment.

Insofar as Judge Dorsey's somewhat equivocal testimony (*supra*, p. 7) was inconsistent with the formal order previously signed by himself and six other members of the Circuit Court, an order that he never mentioned in his testimony, it is entitled to no more weight than that of jury commissioners who undertake a testimonial rebuttal of discrimination statistically demonstrated. *Cassell* v. *Texas*, 339 U.S. 282, 286-287; *Hernandez* v. *Texas*, 347 U.S. 475, 481-482; *Reece* v. *Georgia*, 350 U.S. 85, 88; *Eubanks* v. *Louisiana*, 356 U.S. 584, 587. Furthermore, Judge Dorsey's testimony ran counter to what the highest court of Maryland had said in the *Schowgurow* case (240 Md. at 126, 213 A. 2d at 479):

> "Moreover, this Court takes judicial notice of the fact that it is and for many years has been a widespread practice in this State, not only for grand and petit jurors to be questioned as to their belief in God as part of their oath, but also for prospective jurors to be so questioned, orally or in written interrogations, before their names are placed on the jury lists, and that any person who does not state his belief in God is excluded. Absent an adjudication by this Court or the Supreme Court of the United States that this practice is unconstitutional, the judges, clerks and other court officials who so made belief in God a requisite to jury service were properly performing their duties under our Constitution and the decision of this Court."

It is also to be noted that St. Mary's County is essentially rural, with perhaps the largest concentration of population at and around the Naval Air Station at Patuxent. The 1960 census listed the total population of the county as 38915, and that of Leonardtown, the county seat, as 1208. In this environment jurors are drawn on the basis of the trial judge's personal knowledge of the eligibles, as indeed

the then resident judge testified a few years back.* It is simply not conceivable that any non-believer could ever have been selected as a juror in St. Mary's County prior to the date of the *Schowgurow* case, October 11, 1965—and of course, where a Federal right to the selection of a valid grand jury is claimed, this Court has consistently made an independent reexamination of the facts underlying such a claim. E.g., *Cassell* v. *Texas,* 339 U.S. 282, 283 note 1, and cases there cited.

Third. Petitioner was not required to prove himself a non-believer in order to assert the invalidity under the Fourteenth Amendment of the believer requirement in

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* See *King* v. *State,* 190 Md. 361, 367, 58 A. 2d 663, 665:

> "Chief Judge William M. Loker, who drew the jury in this case, testified that he did not check both the poll books and the assessment records on these particular occasions because he never thought that it was necessary to check both. When asked the question: 'On what date did you consult the poll books this time?' he answered: 'This time? I said I did not do it this time.' He said, however, that in selecting the jury list: 'I make inquiry about men of the county, and try to find out, the best I can, whether they are taxpayers, and if they are taxpayers or voters, find out if they are over 25 or under 70; and most important, what I try to find out about those people is their character, how they stand in the community, their reputation. When I get those names, I always inquired very particularly, unless I know myself, I look at the particular thing, then I check back,—in many instances I reckon some of them I may have forgotten,—but I check back, not more in the list of jurors than I do the assessment records, because the assessment record gives me the amount of the assessment, so that I can know how large it is, what kind of man he is,—that is to say, a frugal, industrious man, probably has a larger assessment. Some will give the name of two or three brothers of the same family, and I look back in the assessment record to see which is the same, or ought to be the same, as the jury list, sometimes it is not; and I get it.'"

The Judge William M. Loker mentioned, now retired, is the father of the present petitioner.

Article 36 of the Maryland Declaration of Rights (*supra*, pp. 3-4). In *Thiel* v. *Southern Pacific Co.*, 328 U.S. 217, this Court held that the systematic exclusion from the jury lists of those who worked for a daily wage invalidated a verdict returned by a trial jury that in fact contained "at least five members of the laboring class" (p. 225), this at the instance of a salesman (*ibid.*), who obviously was not in the blue collar category. Similarly, in *Ballard* v. *United States*, 329 U.S. 187, the exclusion of women from the jury panel resulted in the reversal of the convictions of both a woman and her husband. Both these authorities were primarily relied on by the Maryland Court of Appeals in applying the rule of the *Schowgurow* case—and Schowgurow was a Buddhist—to an individual who believed in the existence of God. *State* v. *Madison*, 240 Md. 265, 271-273, 213 A. 2d 880, 884-885.

Finally it is clear that, where selection of the indicting grand jury has not conformed to the requirements of the Constitution of the United States, it is not necessary for the convicted person to show specific prejudice. That point was squarely decided in *Cassell* v. *Texas*, 339 U.S. 282, over the articulated dissent of Mr. Justice Jackson, 339 U.S. at 298-305—and the Maryland Court of Appeals in *State* v. *Madison, supra*, also relied on *Cassell* v. *Texas;* see 240 Md. at 272, 213 A. 2d at 885.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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DECEMBER 1968.